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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 ARTHUR MILLER,

12 Plaintiff,

13 v.

14 CHAPLAIN RON BAER, *et al.*,

15 Defendants.  
16

CASE NO. C08-5196RBL-JRC

ORDER

17 This case has been referred to the undersigned Magistrate Judge pursuant to Title 28  
18 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrates' Rules MJR 1, MJR 3, and MJR  
19 4. The matter is before the court on plaintiff's second motion to compel discovery (Doc. 44).  
20 Defendants have responded.

21 After reviewing the motion and the remaining record, the court finds and orders as  
22 follows:

23 1. Plaintiff's motion to compel (Doc. 44) is **DENIED**. Plaintiff asks the court to order  
24 the Washington Attorney General to appear on behalf of a former employee of the Washington  
25 Department of Corrections, Chaplain Otis Houston. Alternatively, Plaintiff asks the court to  
26 serve Chaplain Houston and/or appoint counsel in this matter to assist Plaintiff in this litigation.

1 Rule 4(m) of the Federal Rules of Civil Procedure requires the complaint to be served  
2 within 120 days after filing, otherwise the court may dismiss the action without prejudice. It is  
3 Plaintiff's burden to properly serve a copy of the complaint and summons on each named  
4 defendant.

5 In this case, a prisoner condition of confinement matter, the court reviewed the complaint  
6 and directed the U.S. Marshal to conduct service of the complaint. In such a case, it is Plaintiff's  
7 burden to provide the court with the current address for each named defendant. Despite  
8 Plaintiff's discovery requests and disclosure of Chaplain Houston's last known address on a  
9 motion to compel, Plaintiff is unable to locate or provide the court with a current address for this  
10 defendant.  
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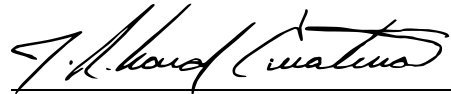
12 2. In response to the motion, defendants filed a cross motion to dismiss Chaplain  
13 Houston due to Plaintiff's failure to serve him within the time period required by Rule 4(m).  
14 The motion to dismiss will be considered after providing Plaintiff with a forty-five (45) day  
15 opportunity to provide the court with either a new address for Chaplain Houston and completed  
16 U.S. Marshal's forms to complete service at the new address or an adequate factual showing and  
17 argument that satisfies the court that service by publication on Chaplain Houston would be  
18 warranted.  
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20 Defendant's cross motion to dismiss Chaplain Houston will be set on the court's **June 26,**  
21 **2009** motion calendar. **Plaintiff shall file any brief in opposition to the motion, which should**  
22 **include the information noted above, by no later than Monday, June 22, 2009.**  
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24 3. With respect to Plaintiff's request for appointment of counsel contained within the  
25 motion to compel, the court previously denied Plaintiff's request to appoint counsel in this  
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1 matter, and the undersigned finds no reason to reconsider that decision at this time. Plaintiff's  
2 motion for appointment of counsel is **DENIED**.

3 DATED this 11<sup>th</sup> day of May, 2009.

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6 J. Richard Creatura  
7 United States Magistrate Judge  
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